

DOCKET NO.: SYNT-0199
Application No.: 10/830,130
Office Action Dated: May 27, 2009

PATENT

Amendments to the Drawings

The attached sheets of drawings includes changes to Figs 5 and 6. The sheets, which include Figs 1-13, replace the original sheets including Figs 1-13.

Attachment: Replacement Sheet(s)

REMARKS

Claims 1-10, 12-21, 23-75, 77, 79, and 80 were previously pending in the application. Claims 1-10, 12, 13, 16-18, 20, 21, 26, 28, 45-48, 75, 77, 79, and 80 are rejected. Claims 15, 27, and 29-44 are objected to. Claims 1, 12, and 75 have been amended. Claims 81-83 have been added by way of this communication. Claims 1-10, 12-21, 23-75, 77, and 79-83 are now pending in the application. Favorable reconsideration and allowance of the application are respectfully requested.

I. Objection to the Drawings

The Office Action asserts that Figs. 5 and 6 of the present application should be designated by a “Prior Art” legend because only that which is old is said to be illustrated. Applicant appreciates the Examiner’s identification of U.S. Patent No. 5,362,475.

In response to the Objection, Applicant encloses herewith a set of replacement drawings including Figs. 5 and 6 which have been amended to include a “Prior Art” legend. Withdrawal of the Objection to the drawings is respectfully requested.

II. Amendments to Claim 12

Claim 12 has been amended to correct a typographical error. This amendment was made for reasons unrelated to patentability.

III. Claim Rejections Under 35 U.S.C. §103

Claims 1-10, 12-21, 23-75, 77, 79, and 80 are rejected under 35 USC §103(a) as being unpatentable over Cole in view of Wagner. Cole is cited as disclosing all elements of independent claims 1 and 75 with the exception of the crimp fitting member having a second portion having a crimp head and a hole in the crimp head that is perpendicular to the crimp shaft that extends longitudinally from the second portion. Wagner is cited as disclosing those elements not said to be disclosed by Cole.

In particular, the Office Action cites Cole as disclosing a cable 20, a crimp fitting member in the form of a washer (and ferrule) 14, a cannulated screw in the form of a bone opening protector 150, and a reconstruction plate in the form of an eyelet anchor 32 (see Cole at Fig. 10).

Independent claims 1 and 75 have been amended to recite a reconstruction plate(s) that has at least one plate hole that slidably receives the at least one cannulated screw or the first portion of the crimp fitting member. Cole does not disclose, teach, or suggest such a feature. In Cole the eyelet anchor 32 does not slidably receive the cannulated screw or the first portion of the crimp fitting member (identified in the Office Action as a washer/ferrule 14). In fact, Fig. 10 illustrates that the eyelet anchor 32 has an opening that receives an anchoring screw 79 (see Paragraph 110), and not the opening protector 150 or the crimp fitting member 14.

The Office Action states, in the “Response to Arguments” section at Pages 5-6, that the eyelet of Cole is capable of being used to receive a cannulated screw, even though the eyelet of Cole does not do so in practice. However, claims 1 and 75 now positively recite that the at least one plate hole slidably receives the at least one cannulated screw. Cole fails to teach or suggest this element recited in claims 1 and 75.

Moreover, the Office Action has not cited Wagner as disclosing structure that cures the deficiency in the Office Action’s application of Cole to amended independent claims 1 and 75.

Rather, the Office Action cites Wagner as disclosing a first portion of the crimp fitting member having a shaft 44 extending longitudinally from the second portion 45 and being attached to the first end of the flexible cable 10. Also disclosed, according to the Office Action, is a second portion having a crimp head and a hole 26 in the crimp head that is perpendicular to the crimp shaft and adapted to slidably receive the second end of the flexible cable.

The Office Action asserts that one skilled in the art would modify Cole’s washer/ferrule 14 to include a crimp fitting member that has a hole perpendicular to the longitudinal axis of the crimp fitting member in view of Wagner.

However, one skilled in the art would not so reconfigure the washer/ferrule 14, because Wagner does not disclose any crimping structure. In fact, Wagner explicitly states disadvantages of using crimps at Col. 2, lines 20-27, and further states that it is “desirable that a cable system be derived that incorporates ... a non-crimping securing mechanism” (see Col. 3, lines 3-5; emphasis added). Wagner therefore explicitly teaches away from using crimps for securing the cable.

The Office Action states, in the “Response to Arguments” section at Pages 5-6, that Wagner found a beneficial way to create a device that would act like a crimping device but in a more beneficial way. However, the MPEP states that “A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. MPEP §2141.02(vi), citing W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). If the Office Action combines Wagner and Cole to introduce a crimp as allegedly disclosed in Wagner into Cole’s structure, such a combination ignores Wagner as a whole. Wagner explicitly states disadvantages of using crimps at Col. 2, lines 26-36, and therefore teaches a non-crimping securing mechanism. As a result, a combination of Wagner and Cole that is compliant with MPEP §2141.02 would incorporate into Cole a non-crimping structure of the type disclosed in Wagner. Thus, the combination of Cole and Wagner would not teach or suggest a crimp fitting member as recited in independent claims 1 and 75.

Because the cited prior art fails to teach or suggest each limitation of amended independent claims 1 and 75, withdrawal of the rejection of claims 1-10, 12-21, 23-75, 77, 79, and 80 is respectfully requested.

IV. New Claims

New dependent claims 81-83 have been added. Claims 81 and 83 depend from claims 1 and 75, respectively, and recite that the flexible cable is secured to the second portion of the crimp fitting member by deforming the second portion of the crimp fitting member. As discussed above, Wagner explicitly states disadvantages of using crimps at Col. 2, lines 20-27.

New claim 82 depends from claim 1, and recites that the cannulation of the at least one cannulated screw slidably receives the first portion of the crimp fitting member.

Formal allowance of claims 81-83 is respectfully requested.

V. Allowable Subject Matter

Applicant notes with appreciation that claims 15, 27, and 29-44 are identified as containing allowable subject matter. Applicant asserts the patentability of claim 1 as providing sufficient basis for the allowance of claims 15, 27, and 29-44. Formal allowance of claims 15, 27, and 29-44 is respectfully requested.

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VI. Conclusion

Applicant therefore asserts that each objection and rejection to the claims has been overcome, and a notice of allowance is earnestly solicited. The Examiner is hereby authorized to contact the undersigned at the telephone number appearing below if such would advance the prosecution of this application.

The Commissioner is hereby authorized to withdraw the \$156 fee for the addition of three claims greater than twenty, along with any additional fees deemed due for this or any other communication, from Deposit Account No. 23-3050.

Respectfully submitted,

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